

THE LAW SOCIETY OF BRITISH COLUMBIA

In the matter of the *Legal Profession Act*, SBC 1998, c. 9

and a hearing concerning

GLEN CAMERON TEDHAM

APPLICANT

DECISION OF THE HEARING PANEL

Hearing date: June 12, 2014

Panel: Nancy Merrill, Chair
Gavin Hume, QC, Lawyer
Laura Nashman, Public representative

Counsel for the Law Society: Henry C. Wood, QC
Counsel for the Applicant: Michael Tammen, QC

OVERVIEW

- [1] The hearing in this matter involved an application by the Applicant for enrolment as an articulated student with the Law Society of British Columbia. The Law Society gave notice to the Applicant that certain matters would be the subject matter of the inquiry as a result of the hearing ordered by the Credentials Committee under s. 19 (2) of the *Legal Profession Act* and Law Society Rule 2-29(3)(c). The specific issues raised in the notice were the Applicant's history of alcohol and chemical dependency, a criminal conviction for shoplifting in approximately 1994, a conviction under the *Customs Act* for failing to declare alcohol that had been purchased in Washington State in approximately 2005, convictions under the *Motor Vehicle Act* arising out of an incident of driving without due care and attention and

failing to remain at the scene of the accident on December 21, 2010 and an assignment into bankruptcy on October 6, 2003.

- [2] When considering the Applicant's history it is necessary to focus on the character and fitness of the Applicant at the time of the hearing. The onus is on the Applicant to establish his or her good character at the time of the hearing on a balance of probabilities. Recent cases in British Columbia and Ontario have emphasized that rehabilitation is of importance. See, for example, *Re: Applicant 3*, 2010 LSBC 23.
- [3] At the conclusion of the evidentiary portion of the hearing, the Panel, after deliberating, advised counsel that it was not necessary to make arguments with respect to whether or not the Applicant would be enrolled. The only issue that required submissions was the terms and conditions under which the Applicant would be permitted to enrol. After submissions, the Panel requested counsel to provide the Panel with an agreement with respect to the terms and conditions that were acceptable to both parties. The Panel was provided with an agreement acceptable to the Applicant and the Law Society, which we have reviewed and also find acceptable. The following are our reasons.

BACKGROUND FACTS

- [4] In approximately 1994, the Applicant was charged with shoplifting in Los Angeles, California. He had replaced a price tag on an item he purchased with the price tag from an item of lesser value. He was convicted of a misdemeanour trespassing, was fined and placed on probation for 12 months. He was 23 at the time. The item was the final electronic component required to complete a computer he was building. This component was unexpectedly as much as he had spent on the balance of the project. The difference in price between the electronic component that he needed and the lower price was approximately \$50. During his evidence, he candidly admitted that he knew that this action was wrong and unacceptable. He indicated that he was ashamed of his action.
- [5] In approximately 2005, as he was returning to Canada from the United States at the Pacific Highway Truck Crossing, the Applicant was charged and convicted under the *Customs Act* for failing to declare alcohol that had been purchased in the United States. The alcohol was seized, and he paid a fine. He explained that his practice at the time was to just answer the questions of the customs officer. Before he completed his answers or was asked about alcohol the officer asked him to open his trunk where a case of wine was located. The wine was one of a series of cases being brought to Canada for his wedding. The duty had been paid on the other

cases brought across on previous occasions. In his evidence the Applicant indicated that he is now more careful about his declarations when crossing the border.

- [6] In July 2010 the Applicant was charged and convicted under the BC *Motor Vehicle Act* for disobeying a railway stop sign. The vehicle in question was parked next to some tracks close to the stop sign. It was a production vehicle for a film shoot. From the vehicle the tracks could be seen at least a kilometre in each direction. The Applicant was working at the film shoot. He took the vehicle from its parked position beside the railway onto the road and then across the tracks without stopping as he could see that the tracks were clear. A CN Rail police officer charged him, and he paid the fine shortly after the ticket was issued.
- [7] The Applicant filed for personal bankruptcy in October 2003 and was discharged on July 7, 2004. Before entering law school, the Applicant worked in the movie business, initially as a camera assistant and ultimately as an independent producer of movies largely for television. He was involved in making the financial arrangements for the movies that he and his partner produced. His partner handled the creative side of the business. The usual process of financing films involved selling the film before production, financing the production with the banks, producing the film and, after production, delivering the film to the purchasers who then paid for the film. The bank was then paid off, and the balance went to the partners. The financing arrangements for the numerous films that were produced required personal guarantees. Initially the Applicant and his partner experienced success. However, while producing a film based on a Stephen King story, the European television market collapsed, and the presales fell through.
- [8] With the bank's approval, a year-long effort was made to market the film again. Ultimately, the effort failed as the European television market did not recover. Some sales were obtained, and the debt reduced as a result. As a personal guarantee, pursuant to the usual practice, had been given, there was a shortfall of approximately \$700,000. On advice, the Applicant filed for bankruptcy. The debts totalled approximately \$900,000 and were largely related to his involvement in the movie-production business. This included \$160,000 loaned to him by his grandmother to assist him during the financial crises.
- [9] The Applicant remained in the movie industry and taught at the Vancouver Film School. He was terminated without cause from the school and decided to go to law school as he was tired of the risks associated with the film industry. He attended the University of British Columbia ("UBC") Law School and the University of Houston Law Center on an academic exchange with UBC. He has worked with a

law firm in various capacities including with the permission of the Law Society as a paralegal since graduation from UBC.

- [10] The Applicant's greatest challenge has been his addictions. Considerable evidence was adduced concerning his struggles with drugs and alcohol addiction. He initially believed that his addiction problem was solely related to drugs and in particular cocaine. He attended a treatment facility on November 28, 2008 and was discharged in February 2009. He did not follow the prescribed treatment plan. He returned to the facility in early July 2009 and was discharged later that month. He began attending recovery meetings but continued to believe that drug addiction was his only problem.
- [11] On December 21 2010, the Applicant was charged and subsequently convicted for several offences under the BC *Motor Vehicle Act*. The offences were: failing to remain at the scene of an accident; failing to produce a driver's licence; and driving without due care. A 24-hour driving prohibition was imposed. At this point in his struggle with addictions, the Applicant had not consumed alcohol for more than a year. However, he then thought that he could limit his consumption of alcohol. He was alone, had just had his 40th birthday, had finished first year law school Christmas exams and was facing the holiday period alone. He decided to have one drink but did not stop at that. During his evidence he admitted that he knew he was drunk but decided to drive despite that. He described that decision as a disaster. He hit a construction barrier but has no recollection of doing that. That was apparently observed by a police officer who then followed him and ultimately stopped him. He admitted his mistake to the officer, who decided not to put him in jail but instead issued the 24-hour suspension and issued the tickets for the offences referred to above. He walked home, complying with the 24-hour suspension, and paid the fines shortly after the tickets were issued. He attended an AA meeting the next day and has since used the incident as a reminder of problems that can occur if he has a drink.
- [12] The Applicant has since recognized that he is also an alcoholic. This realization occurred as a result of an incident in October 2011 where he relapsed and consumed alcohol for a number of days. Since then he has followed a rigid regime associated with Alcoholics Anonymous ("AA") and with the support of the Lawyers Assistance Program ("LAP"). He has been sober since October 2011. Since that date he has entered a monitoring recovery agreement, for several months had random urinalysis, followed the 12 steps of the AA program, has a sponsor under the AA program who is a lawyer with whom he is in constant contact, regularly attends AA and the LAP Lawyers Accountability Group meetings.

- [13] Pursuant to the Law Society process, the Applicant, with his consent, was referred to Dr. Ray Baker, an addiction specialist retained by the Law Society for his opinion on whether the Applicant's addiction condition was reasonably likely to impair his ability to function as an articled student. Dr. Baker initially concluded that the Applicant suffered from a substance abuse disorder and that it appeared he had successfully entered stable abstinent remission. However, in order to make a final determination of the Applicant's fitness to become an articled student, Dr. Baker recommended an independent examination by a recognized occupational addiction physician. With the consent of the Applicant, he was referred to a specialist for a detailed Independent Medical Assessment. The detailed report from the specialist was provided to Dr. Baker, who maintains the confidentiality of the report but then, based on the report, provides his recommendations of steps to be taken to ensure that an applicant will remain medically fit to become an articled student. Dr. Baker's recommendations are to be found in his report to the Law Society dated September 10, 2013 (Tab 9 of Exhibit 2). In this instance, however, the Applicant provided the detailed report of the specialist to the Panel. His recommendations are consistent with those of Dr. Baker.
- [14] The Applicant agreed to all of Dr. Baker's recommendations. The Credentials Committee, at their September 26, 2014 meeting, ordered a hearing into the Applicant's application for enrolment as an Articled Student. The hearing was held on June 12, 2014, and the Applicant testified and was cross-examined. At the conclusion of the evidentiary portion of the hearing, the Panel, after deliberating, advised that it only needed to hear submissions on appropriate terms of enrolment in the articling program. During the course of submissions, it appeared to the Panel that the parties were in agreement as to the appropriate terms. As a result the Panel asked the parties to reduce their apparent agreement to writing for the Panel to consider. The parties did that, and it was provided to the Panel on June 27, 2014.
- [15] The agreement provides in part as follows:
- The limitations and conditions are:
1. to article and practise only in a law firm or other business setting in which he is supervised by at least one lawyer with a minimum of eight years of call who is in active practice;
 2. not to be a signatory on a trust account; and
 3. to comply with all of the recommendations made by Dr. Ray Baker in his report of September 10, 2013 (Tab 9 of Exhibit 2 at the admission hearing), which include the following:

- (a) Abstinence from alcohol, illicit drugs and other addictive medications, prescribed or otherwise. In the event of a necessary prescription for an opioid, as might occur following surgery, for example, then standard and accepted safeguards that are used in medically monitored abstinence for substance-dependent persons should be instituted and verified by a medical monitor.
 - (b) Continued participation in the Lawyers Assistance Program under the direction of Derek LaCroix, QC.
 - (c) Discontinuation of psycho-stimulant medications related to the treatment of ADHD, or continuation only after medical consultation with and approval by a psychiatrist with recognized expertise in addiction psychiatry.
 - (d) Rigorous medical monitoring similar to his current arrangement with Healthquest for a duration of not less than two years of stable, abstinent and compliant remission if not taking addictive medication, or not less than four years of stable, abstinent and compliant remission in the event that he elects to continue to receive prescriptions for an addictive psycho-stimulant drug, such as Adderall.
4. The Applicant will also be responsible for instructing his monitor to:
- (a) report promptly to the Credentials Committee of the Law Society any non-compliance with the monitoring or relapse prevention agreements;
 - (b) submit a report to the Credentials Committee in any event every 12 months while monitoring is in place; and
 - (c) submit a final report to the Credentials Committee at the end of the monitoring period or upon its early termination for any reason.

[16] The Law Society and the Applicant agreed that the foregoing limitations and conditions were to be effective during the Applicant's articles and that they should continue for a three-year period of practice following his call and admission. It was agreed they should stay in effect until the Applicant was expressly released from the obligations in whole or in part by the Credentials Committee upon a written application by the Applicant.

ISSUES

[17] There are two issues:

- (a) Should the Applicant be permitted to enrol as an articling student pursuant to the *Legal Profession Act*?
- (b) If the answer to (a) is yes, what conditions if any should be imposed?

ANALYSIS AND DECISION

[18] It is necessary for this Panel to determine whether the Applicant satisfies the requirements of s. 19(1) of the *Legal Profession Act*. That section provides as follows:

19(1) No person may be enrolled as an articulated student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and fit to become a barrister and a solicitor of the Supreme Court.

[19] Pursuant to s. 22(3) of the *Legal Profession Act*, the Panel must grant the application, grant it subject to appropriate conditions or limitations, or reject it.

[20] In *Re: Applicant 3*, 2010 LSBC 23, the panel had this to say:

[22] Credential hearings are a challenge to panel members. They have to enquire into an applicant's "good character and repute". This enquiry raises high human drama. ... The question becomes whether the applicant is able to demonstrate that he or she has rehabilitated himself or herself. Always a balance must be struck between protecting the public from rogue or undesirable lawyers and the concept of redemption through rehabilitation, which runs deep in western civilization.

[23] The determining factor at all Credentials hearings is the public interest. To protect the public, the Law Society must be satisfied that an applicant meets the test of being of "good character and repute". Unlike in the disciplinary context, the onus is on the Applicant to meet this standard. In this context, public interest has a broader meaning. It is in the public interest to have articulated students and lawyers from diverse backgrounds. Persons who have gone astray and have truly rehabilitated themselves can give

valuable insight to clients, the courts and the public. They can become valued and trustworthy members of the profession. They set an example to all of us. However, here the onus is on this Applicant to prove his rehabilitation. It is not enough for the Applicant to appear and say, “These events happened a long time ago, and by the way, I have rehabilitated myself.” A much more thorough examination is required.

[21] *Re: Applicant 3 (supra)* provides a very useful summary of the approach to be taken in ascertaining whether or not a person is of good character and repute. It reads as follows:

[14] The Applicant has the burden of proving that he meets the character and fitness test on a balance of probabilities (Rule 2-67). In *Law Society of BC v. McOuat*, June 12, 1992 Panel Decision at p. 11 (affirmed by the Court of Appeal in *McOuat v. Law Society of BC* (1993), 78 BCLR (2d) 106), the panel commented on the central question of what constitutes good character:

What constitutes good character and repute and fitness to become a barrister and a solicitor of the Supreme Court? In an article entitled, “What is ‘Good Character’?” published in *The Advocate*, (1987) v. 35, at 129, Mary Southin, QC (as she then was), considered the meaning of the terms, stating:

I think in the context “good character” means those qualities which might reasonably be considered in the eyes of reasonable men and women to be relevant to the practice of law in British Columbia at the time of application.

Character within the Act comprises in my opinion at least these qualities:

1. An appreciation of the difference between right and wrong;
2. The moral fibre to do that which is right, no matter how uncomfortable the doing may be and not to do that which is wrong no matter what the consequences may be to oneself;

3. A belief that the law at least so far as it forbids things which are *malum in se* must be upheld and the courage to see that it is upheld.

What exactly “good repute” is I am not sure. However, the Shorter Oxford Dictionary defines “repute” as “the reputation of a particular person” and defines “reputation” as:

1. The common or general estimate of a person with respect to character or other qualities; the relative estimation or esteem in which a person is held.
2. The condition, quality or fact of being highly regarded or esteemed; also respectability, good report.

In the context of s. 41 I think the question of good repute is to be answered thus: would a right-thinking member of the community consider the applicant to be of good repute? ...

If that right-thinking citizen would say, knowing as much about an applicant as the Benchers do, “I don't think much of a fellow like that. I don't think I would want him for my lawyer”, then I think the Benchers ought not to call him or her.

- [15] Mary Southin's article has been quoted with approval in several other British Columbia Law Society Credentials decisions, such as *Re: Smart* (December 19, 1996 Panel Decision at p. 3).
- [16] The test of good character and repute has both subjective and objective aspects. This was explained by the hearing panel in *McOuat*, (*supra*), at p. 12:

The word “character” in the expression “good character and repute” has been treated in many decided cases, especially the older ones, as importing the character or “characterization” given the applicant by other persons, what may be called a subjective sense. An example is *Leader v. Yell* (1864), 16 CB (NS) 584; 143 ER 1256 where Erle CJ said:

Good or bad character does not depend on what a man knows of himself; it means his general reputation in the estimation of his neighbours.

In the same case Byles J said:

... character does not mean a man's real conduct and mode of life, but it means his reputation among his neighbours.

In more recent cases the words "good character" seem to be applied in the context of "strength of character" or "character defect". Used in that way the expression "good character" refers to what a man's personality, principles and beliefs actually are as opposed to the way the community regards him, whether or not he has earned the good or bad regard in which he is held. This sense may be considered objective.

One tends to naturally consider it more important that a lawyer be a good person and have and act upon correct principles as opposed to being regarded, rightly or wrongly, by others as seeming to be good or bad. But we think we are required to consider the regard in which the candidate is held by others as well as the qualities of character Mr. McOuat possesses, that is both the subjective and objective senses of "good character".

[17] In this same case, the panel explained the fitness test at pp. 17-18:

The demands placed upon a lawyer by the calling of barrister and solicitor are numerous and weighty and "fitness" implies possession of those qualities of character to deal with the demands properly. The qualities cannot be exhaustively listed but among them must be found a commitment to speak the truth no matter the personal cost, resolve to place the client's interest first and to never expose the client to risk of avoidable loss and trustworthiness in handling the money of a client.

The cannons [sic] of legal ethics [*Professional Conduct Handbook*, chapter 1] adopted by the Law Society provide assistance, when they assert:

A lawyer is a minister of justice, an officer of the Courts, a client's advocate, and a member of an ancient, honourable and learned profession.

In these several capacities it is a lawyer's duty to promote the interests of the State, serve the cause of justice, maintain the authority and dignity of the Courts, be faithful to clients, be candid and courteous in relations with other lawyers and demonstrate personal integrity.

- [22] The parties reached an agreement on some of the facts through an Agreed Statement of Facts. The Applicant gave evidence and was cross-examined by Law Society counsel. The Law Society did not call any other evidence. The Applicant testified about each of the issues identified by the Law Society in its notice.
- [23] In his testimony about the 1994 shoplifting incident, the Applicant was clearly embarrassed about his actions and candidly and clearly admitted that his action was wrong and unacceptable. The Panel accepts his admission and is of the view that such an action will not be repeated.
- [24] The Applicant explained his 2005 conviction under the *Customs Act* as occurring as a result of his view that he should simply answer the questions of the Customs Officer and no more. He recognizes that that is not appropriate and is now more careful and complete about his declarations when crossing the border. The Panel accepts his explanation.
- [25] The Applicant explained his conviction in July 2010 under the *BC Motor Vehicle Act* for disobeying a railway sign. The Panel accepts his explanation. He admitted that he was wrong in thinking that, as he was parked beside the railway and could see that the track was free for a kilometre in both directions, he did not need to stop at the stop sign. As a result he paid his fine.
- [26] The Applicant explained the charges and subsequent convictions that occurred as a result of the drinking he engaged in on December 21, 2010. It is clear to the Panel that, at that point, the Applicant had not fully grasped the extent and significance of his alcohol addiction. The Panel is of the view that he now does, and as discussed in the Background Facts and below, he has entered into a regime that helps to ensure that he continues to maintain his sobriety.
- [27] The Applicant testified and was cross-examined extensively about his personal bankruptcy. This is, of course, of considerable concern to the Law Society given the trust the public places in the profession with respect to the handling of trust

funds. Having considered the evidence, the Panel accepts that the Applicant was subject to financial circumstances beyond his control. In particular, given the manner that films were financed as described above, and the collapse of the European television market, it appears inevitable to the Panel that the Applicant was destined to have to assign himself into bankruptcy. Instead of doing that immediately the Applicant made significant efforts to minimize amounts owed to his creditors. This included borrowing \$160,000 from his grandmother to attempt to assist in maintaining the business and meeting his obligations. He also attempted to re-market the film with limited success but in fact reducing the amount owing to the banks. However, in view of the bankruptcy, the Panel is of the view that there should be limitations on the Applicant's ability to be signatory to trust funds for a period of time.

- [28] The Panel reached the conclusion at the end of the evidentiary portion of the hearing that the foregoing matters were adequately explained and did not lead to the conclusion that the Applicant was not of good character within the meaning of that expression in the *Legal Profession Act*. He understood the significance of his acts. The Panel is satisfied that he will not act dishonestly. The December 2010 incident occurred as a result of the Applicant's inability to recognize that his addictions included alcohol.
- [29] The Applicant has struggled with his addictions and has made many efforts to deal with them. Initially his efforts failed. However, he described in detail his commitment to take the necessary steps to ensure that he does not fail again. The Law Society must be satisfied that the Applicant's addictions are not reasonably likely to impair his ability to function as an articled student and, assuming that he successfully completes his articles, that he can also function as a lawyer despite his addictions. As a result, the Law Society sought the professional opinion of Dr. Ray Baker, an addiction specialist. Dr. Baker's opinion was that the Applicant suffers from a substance abuse disorder and that his history indicated that he had successfully entered into stable abstinent remission from that medical condition.
- [30] However, Dr. Baker recommended that the Applicant undergo a detailed independent examination by a qualified physician. The Applicant consented to such an examination and was, as a result, examined. The report of the examination was provided to Dr. Baker who holds the report in confidence. However, the Applicant, who also received a copy, provided it to the Panel. Recommendations were made to ensure that the Applicant will be medically fit to assume his responsibilities as an articled student. During the submissions on what conditions should be imposed if the Applicant was to be enrolled as an articled student, the Applicant, through his counsel, indicated that he was prepared to comply with the

recommendations. The agreement described above incorporates the recommendations. The Panel is satisfied, given his addictions, that the Applicant will be fit to meet his responsibilities as an articulated student if he complies with the terms of agreement pertaining to his addictions.

- [31] The Applicant entered the UBC law school in September 2010 as a mature student. It appears that he had a successful academic career. He was a member of the team from UBC that won the National Labour Law moot. He successfully completed a year at the University of Houston Law Center on an academic exchange with UBC. Between second year and third year he worked at a law firm and subsequently accepted an offer of employment with the firm after completing third year. He returned to the firm in August 2013 where he has worked in various capacities, latterly with the permission of the Law Society as a paralegal.
- [32] The Applicant provided the Panel with a number of letters of recommendation. The Panel carefully reviewed them. Most of the authors were familiar with the Applicant's history. Essentially without exception, the letters of reference in various ways expressed the view that the Applicant had the intelligence, skill and maturity to become an excellent lawyer. Most telling were the letters from the principal of the law firm where he has been working in various capacities and from the lawyer who is his sponsor in the AA Program. The latter is also a member of the Lawyers Assistance Program Accountability Group. Both lawyers fully supported his application for articles. The law firm where he has been working has committed to employ him as a student and to provide appropriate supervision during his articling year. The lawyer who sponsors the Applicant confirmed from his perspective the commitment of the Applicant to the obligations of the Accountability Group of LAP.
- [33] After reviewing the letters of recommendation and the evidence of the Applicant, the Panel concludes that the Applicant is currently of good character and repute. After reviewing the medical reports and the evidence of the Applicant, the Panel also concludes that the Applicant is currently fit to be an articulated student. However, in order to ensure that he remains fit, the Panel concludes that it is necessary to require that the Applicant, while articling, comply with the recommendations of Dr. Baker. The recommendations are contained in the agreement described above. It is so ordered.
- [34] The Panel's role is to consider the Applicant's application to enrol as an articulated student, which it has done. The Panel does not have jurisdiction to make orders with respect to a future application for call and admission that the Credentials Committee may consider. However, the Panel recommends that the Committee

approve the Applicant's call and admission, provided that the he continues to maintain his sobriety and to comply with the terms of the agreement, subject to the terms of the agreement in the form of conditions and limitations on his practice of law, including that he be supervised and not be signatory to a trust account for a time. If the Applicant continues to consent to those conditions and limitations, he will be able to proceed to call and admission without the need for a further hearing.